IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

:: O R D E R ::

S.B. CIVIL WRIT PETITION NO. 3885/1993

Jethmal

Vs.

Union of India & Ors.

DATE OF ORDER :: October 8 ,2007

PRESENT

HON'BLE MR. BHANWAROO KHAN, J.

None present on behalf of the petitioner
Mr. V.K.Mathur, for Union of India

The petitioner has filed the instant writ petition against the rejection of his claim for the disability pension, while he was in Army service and discharged on the basis of medically unfit.

Briefly stated that facts of the case are that the petitioner was enrolled on 30.3.1970 in the Army as Signal Man after due medical examination and was found medically fit. During the training period, he developed abdominal pain and was admitted in Military Hospital, Jabalpur. An operation was conducted and petitioner's right kidney was removed. He was

discharged from the Hospital on 30.1.1971 and was declared unfit for military service on 6.1.1971. Since he developed the disease during training period, his claim for disability pension is maintainable as the same disease is attributable to and aggravated by service and as per rule, he is entitled to the disability pension. But the authorities concerned rejected it illegally and without any basis. Hence this writ petition.

The respondents in their reply admitted about the factual aspects of the matter i.e. enrollment of the petitioner as Signal Man and operation and removal of kidney and pleaded that the petitioner was suffering from multiple renal pelvis calculi of right kidney and to save the further aggravation of the disease and the life of the petitioner, an operation was conducted and thereafter when he was found unfit for the military service, he was discharged. Within a short period of 4 months from commencing of his training period the disease was detected and the disease was not attributable to or aggravated by military service. Rule 173 of the Pension Regulations for Army specifically provides that unless it is attributable to or aggravated by service, the pension cannot be sanctioned after discharge from the military service. The medical board specially constituted gave its opinion that the disability of the petitioner is not attributable to or aggravated by military service. Hence, the authorities have

rejected his claim for disability pension rightly and petitioner is not entitled to any disability pension.

None appeared on behalf of the petitioner. The learned counsel for the respondent was heard and perused the material placed on record.

Rule 173 of the Pension Regulations for the Army provides for grant of disability pension to any person who is invalidated from military service on account of a disability which is attributable to or aggravated by military service where disability is assessed at 20% or more. Appendix II also provides that the relevant facts should be considered while deciding whether the military service during which the Army Person acquired the disability is attributable to or aggravated by military service or not. The petitioner's disease which is described as multiple renal pelvis calculi of right kidney in no circumstance can be presumed to be attributable to or aggravated while serving in the Army. The petitioner only served in the Army for 4 months and while having his training, the calculi, which he developed in his right kidney cannot be presumed to have crept in during the service. The formation of calculi in the kidney takes a long time and it is nothing to do with the service of Army or co-relation with the Army service.

Besides this, the Medical Board's opinion does not support the petitioner's claim. The Medical Board has opined that the disability of the petitioner from which he was suffering at the time of Medical Board is not attributable to or aggravated by military service. This is the medical board's opinion on which the court cannot sit as an appellate authority. The judgment cited by the learned counsel for the respondents in D.B.Civil Special Appeal (Writ) No.254/2006 (Union of India & Ors. vs. Shri Bhoora Ram) squarely covers the controversy raised in this writ petition. From the facts and circumstances of the case and the documents submitted by the learned counsel for the respondents and the cited judgment, the petitioner's case for disability pension is not made out and the writ petition deserves to be rejected.

Consequently, the writ petition filed by the petitioner is rejected. No order as to cost.

(BHANWAROO KHAN)J.

BKS/